



POLICE DEPARTMENT

May 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Johnjay Hanlon
Tax Registry No. 934988
Transit District No. 2
Disciplinary Case No. 2014-12471

The above-named member of the department appeared before me on April 8, 2015, charged with the following:

1. Said Police Officer Johnjay Hanlon, while off-duty and assigned to Transit District #2, on or about and between September 25, 2014 and September 30, 2014, did fail and neglect to properly safeguard his service firearm, a Smith and Wesson Model 5946, SERIAL #BAY3045, to wit: Said Police Officer did leave his firearm on top of a coffee table in his living room which resulted in it's(sic) loss.

PG 204-08 Page 2 Para 7 – FIREARMS GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

2. Said Police Officer, Johnjay Hanlon, while assigned to Transit District #2, on or about and between September 25, 2014 and September 30, 2014, after having become aware of the loss of his firearm, did fail and neglect to timely notify the Internal Affairs Bureau Command Center, as required.

PG 207-21 Page 1-2 – ALLEGATIONS OF CORRUPTION AND OTHER
MISCONDUCT AGAINST MOS COMPLAINTS

3. Said Police Officer Johnjay Hanlon, while off-duty and assigned to Transit District #2, on September 30, 2014, did fail and neglect to properly safeguard his off duty firearm, a Glock 9MM Model #GLC19, Serial # AMU318US to wit: Said Police Officer did secure his off duty firearm by placing it under his mattress, in his residence, which he shares with another individual.

PG 204-08 Page 2 Para 7 – FIREARMS GENERAL REGULATIONS UNIFORMS
AND EQUIPMENT

The Department was represented by Jessica Brenes, Esq. Department Advocate's Office, and Respondent was represented by John Tynan, Esq. The Respondent testified on his own behalf and admitted that he had committed the misconduct as charged in the specifications above. Respondent presented testimony to be considered in mitigation regarding the penalty in this case. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witness, this tribunal recommends that as a penalty Respondent forfeit the ten (10) days he served on suspension and fifteen (15) vacation days.

FINDINGS AND ANALYSIS

Respondent admitted that he committed the misconduct charged in the three specifications in this case. In September, 2014, Respondent lived in a three family house. He shared his apartment with a roommate. His aunt and uncle lived in an apartment downstairs. Another tenant, Joseph, and his mother, occupied the third apartment in the house. Respondent would normally leave his apartment door open so that his uncle could call up to him to help with his sick aunt. When the apartment door was open, anyone in any of the three apartments in the building at those times, could also access Respondent's apartment. On the evening of September 24, 2014, Respondent left his loaded service weapon on a coffee table in his apartment. The last

time Respondent remembers seeing this weapon was on this coffee table on September 25, 2014. At the time, Respondent had a second gun, his off-duty firearm, which he kept under his mattress.

On the evening of Friday, September 26, 2014, Respondent was visited at his apartment by a female he had communicated with for about a month. Prior to letting the female into his apartment that night, Respondent noticed that his service weapon was not on the coffee table. He assumed he had put it away. He did not make any attempts to locate it at that point. The female stayed with Respondent until Sunday evening. During the day on Saturday, Respondent and the female spent most of the day out of the apartment. On Sunday, September 28, 2014, Respondent started to look for his service weapon. He searched the female's bags, but did not find it. He continued to look for the service weapon for about a day and a half. On September 30, 2014, Respondent notified his command that his service weapon was missing. The service weapon was never recovered.

PENALTY

In order to determine an appropriate penalty, respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has asked for a penalty of forfeiture of ten (10) days already served on suspension without pay and the forfeiture of fifteen (15) vacation days. Respondent's position is that any penalty in addition to the ten days already served on suspension without pay would be excessive.

The penalty of forfeiture of ten (10) days already served on suspension without pay and the forfeiture of fifteen (15) vacation days is appropriate in this case due to several factors. First, Respondent failed to safeguard two separate guns. Second, Respondent made the situation worse, and violated another Patrol Guide requirement, when he did not promptly notify his command that his service weapon was missing.

With respect to failing to safeguard his firearms, Respondent can best be described as being completely lax with regard to taking precautionary measures to secure either firearm. He left both of the guns in an apartment which was "normally unlocked" and was accessible to others. Inside this normally unlocked apartment, Respondent would keep his guns in places such as next to his bed or under his couch or, as on September 24, 2014, with regard to his service firearm, lying loaded in plain sight on a coffee table. Respondent had a roommate who easily could have had access to either gun as it was lying around in various unsecured places in Respondent's apartment. With Respondent's door unlocked, anyone in that building or their guests could have had access to both of the guns. Respondent's aunt, uncle, or the neighbors, Joseph and his mother, could have walked into Respondent's unlocked apartment and had access to the guns. In addition, anyone visiting the other two apartments in the building could also just as easily entered into Respondent's apartment and had access to two unsecured guns. It is particularly troubling that, as Respondent acknowledged, visitors to his uncle's apartment included minors. Yet, despite having a roommate, and knowing that he normally kept his apartment unlocked, and further knowing that other people were living in, or visiting, the three story building and could access his apartment, Respondent still failed to make sure that two firearms were safely locked away and were not accessible to, or endangering, any of these people.

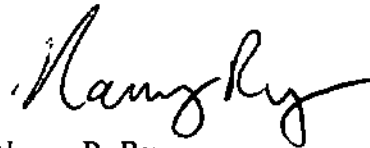
Failing to secure two firearms alone could be deemed to justify the penalty being imposed in this case, but Respondent committed the further misconduct of failing to timely report the missing loaded service gun. Respondent can be faulted on two levels with regard to this failure to report. First, Respondent made assumptions about where a loaded firearm was, instead of actually verifying its location. When Respondent testified he first noticed the gun wasn't on the coffee table, he "assumed" he had put it someplace else. A loaded service gun is a deadly weapon. Respondent should not be making assumptions about where this weapon is, but should be checking to make sure he knows where it is. By making this assumption, Respondent delayed the period of time before he began his search for the weapon. Second, even after Respondent knew he wasn't sure where the firearm was, he delayed reporting the loss. He testified he spent a day and a half searching, what he described as a two bedroom apartment, for the gun before he notified his command. Any delay in reporting increases the amount of time an unauthorized person may have the loaded firearm before law enforcement is aware of this dangerous situation. A delay in reporting also cost the Police the chance to initiate a quick investigation into the possible people who had access to the gun. A prompt investigation would be more likely to lead to a successful recovery effort. Respondent's assumption, and his further delays in searching his apartment for the gun, resulted in the missing gun being gone for over five days between the time he last saw it and when the Police were informed that a loaded service weapon was unaccounted for.

I have considered Respondent's arguments that the total 25 day penalty should be reduced due to his service record and also reduced because the Respondent has celiac disease and he has to take a significant number of days off due to this disease. Respondent's suggestion is that the use of vacation days to accommodate his illness would possibly allow him to avoid using so

many sick days as to be considered chronic sick. I have rejected this argument as a grounds for mitigation in that Respondent does have unlimited sick time which he can use to accommodate his illness. Moreover, he did not claim that his illness in any way caused him to commit the misconduct. With regard to Respondent's service record, his lack of any prior disciplinary history has been taken into account, in that the penalty in this case is, if anything, on the low side when you consider the aggravating factors involved set forth above.

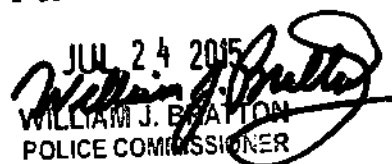
Therefore, this tribunal recommends a penalty of forfeiture of ten (10) days already served suspension without pay and the forfeiture of fifteen (15) vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner - Trials

APPROVED

JUL 24 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHNNJAY HANLON
TAX REGISTRY NO. 934988
DISCIPLINARY CASE NO. 2014-12471

Respondent was appointed to the Department on July 1, 2004. His last three annual evaluations were as follows: he received an overall rating of 3.5 "Highly Competent/Competent" in 2014, a 3.0 "Competent" in 2013, and a 4.0 "Highly Competent" in 2012. [REDACTED]
[REDACTED]
[REDACTED]

He has no other formal disciplinary record.

For your consideration.



Nancy Ryan

Assistant Deputy Commissioner Trials